

Docket OST-2002-13089 - 3 /

MOTION OF UNITED PARCEL SERVICE CO.

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Dated: March 11, 2003

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

In the Matter of the

CITIZENSHIP OF DHL AIRWAYS, INC.

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Docket OST-2002-13089

MOTION OF UNITED PARCEL SERVICE CO.

By this Motion,¹ United Parcel Service Co. (“UPS”) requests that the Department of Transportation (the “DOT” or “Department”) release for public viewing the unredacted March 4, 2003, letter from the DOT Inspector General to Congressman Don Young. In support of this Motion, UPS states as follows:

1. On March 4, 2003, the Department Inspector General Ken Mead issued a written response to The Honorable Don Young, Chairman of the House Transportation and Infrastructure Committee, regarding the DOT Inspector General’s evaluation of the informal process used in reviewing the citizenship and foreign control of DHL Airways, as well as the Department’s requirements for establishing U.S. citizenship and control of its domestic air carriers.

¹ UPS request that the Department accept and grant this Motion as a document responsive to its request for comments on the Inspector General’s letter. *See* Notice Requesting Comments, Docket OST-2003-13089 (Mar. 5, 2003); *see also* 14 C.F.R. § 302.6. In the alternative, UPS asks that this Motion be accepted as an otherwise unauthorized document. *See* 14 C.F.R. § 302.6(c). Receipt of this Motion would be in the public interest as it pertains to matters which are relevant to the Department in its consideration of issues in the instant proceeding. Receipt and consideration of this document would not result in any delay in this proceeding.

2. On March 5, 2003, the Department issued a Notice Requesting Comments on the Inspector General's letter, placing a redacted version on the public record and informing the public that, for an interim period, an unredacted version was available for review with certain access restrictions. In this Notice, the Department stated that the unredacted version contained information "that is the subject of a request from DHL Airways for confidential treatment."² As such, the Department made the unredacted version available only to certain "counsel and outside experts for interested parties" who may view the unredacted letter if they filed confidentiality affidavits with the Department.

3. Prior to March 5, 2003, UPS had no knowledge of such confidential material or DHL Airways' motion for confidential treatment of information submitted to the Department in the context of a citizenship review. Indeed, a search of the DOT docket reveals no such motion. Because UPS desires a full airing of all relevant facts and circumstances pertaining to the citizenship of DHL Airways, UPS intends to file, under separate cover, an Answer to DHL Airways' confidentiality motion.

4. UPS respectfully requests that the Department not afford the unredacted Inspector General's letter any confidentiality protection. Rather, UPS requests that the DOT immediately make public to all parties (without confidentiality affidavit), and place on the docket in this proceeding, the unredacted version of the Inspector General's letter so that all parties and their decision-makers may review it.

² Notice Requesting Comments, Docket OST-2003-13089, at 1 (Mar. 5, 2003).

5. First, and most important, DHL Airways does not object to the release of this information.³ In essence, DHL Airways has waived its rights to protection of the information contained in the unredacted letter by authorizing its release. In its March 10, 2003 letter, DHL Airways acknowledges that the protected information in the unredacted letter comes from a larger body of information that is the subject of a Rule 12 motion, but also now believes that it is in the public interest for the Department to “release immediately the full text of the Inspector General’s correspondence to the public.”⁴ If DHL Airways no longer sees a need to protect the information from public viewing, neither should the Department.

6. Second, it is obvious from the summary of the confidential information contained in the unredacted letter—which UPS’ attorneys and outside experts have viewed in accordance with the required confidentiality affidavits—that the material should not be afforded confidential treatment. The types of material that are ordinarily afforded confidential treatment are trade secrets and business confidential information—which, if released, would cause competitive harm to a carrier. The information in the IG letter contains no such information. Further, the recommendations contained in the Inspector General’s letter can only be fully understood by having the complete, unredacted letter made public.

³ See Letter of Steven Lachter, Counsel for DHL Airways to Department of Transportation, Docket OST-2003-13089 (Mar. 10, 2003).

⁴ *Id.* at 2.

WHEREFORE, United Parcel Service Co. respectfully requests that the Department of Transportation make public, without the requirement that parties file confidentiality affidavits, the unredacted version of the Inspector General's March 4, 2003 letter to Congressman Young and grant such other and further relief as may be deemed just and necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Vaughan", is written over a horizontal line.

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Date: March 11, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March 2003, a copy of the foregoing document was sent, via first-class mail, postage prepaid to the following:

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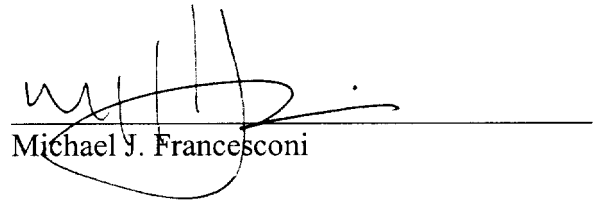
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